MC(N) 1605/2006

BEFORE

THE HON’BLE MR. JUSTICE B.P. KATAKEY

Heard Mr. Chaliha, learned Sr. counsel for the applicant, Mr. C. Chowdhury, learned counsel for the respondent No.1/claimant and Mr. Goswami, learned counsel for the respondent No.2/insurer.

The applicant, who is the owner of the motor vehicle bearing Registration No.AS-23-8858 (Mini Truck) and which was involved in an accident occurred on 20.04.2000, which gives rise to MAC Case No.12/2001, disposed of vide award dated 28.04.2003 by the learned Member, Motor Accident Claims Tribunal, Tinsukia, by the present application is seeking condonation of delay of 1017 days in preferring the appeal contending inter alia that though initially on receipt of the notices, he entered appearance through the learned counsel before the learned Tribunal, on the advice of the learned counsel that in view of the policy of insurance taken by him, the award, if any, would be against the insurer, he did not subsequently contest the said proceeding. It has also been contended that though the award was passed on 28.04.2003, he came to know about the same only on 21.04.2006, thereby causing delay of 1017 days.

While the respondent/claimant has not filed any affidavit-in-opposition to the prayer for condonation of delay, the respondent/insurer has filed the affidavit opposing the prayer for condonation of delay contending that the grounds taken in the application do not constitute the sufficient ground for condoning the delay. In the said affidavit, the respondent No.2 has also disputed the contention of the applicant that he had no knowledge about the award passed prior to 21.04.2006.

Mr. Chaliha, learned Sr. counsel appearing for the applicant referring to the aforesaid averments made in the application has submitted that the delay may be condoned. It has also been submitted that it is apparent from the award passed by the learned Tribunal that the claimant/respondent No.1, who was travelling in the goods carrying vehicle belonging to him, was the owner of the goods carried in the vehicle and, therefore, the insurance company is liable to pay the compensation that has been awarded by the learned Tribunal, in view of the contract of insurance between the owner of the vehicle as well as the insurance company. According to Mr. Chaliha, the decision of the Apex Court in Oriental Insurance Co. Ltd. Vs. Vevi Reddy Kanda Reddy and ors. reported in 2003 SCW 513, placing reliance on which the learned Tribunal has absolved the insurance company from its liability was rendered prior to the amendment of 1994 Amendment and as such the said decision is not applicable.

Mr. Goswami, learned counsel appearing for the respondent No.2/insurer, on the other hand, has submitted that the applicant has failed to make out any ground to condone the delay as he has admitted that upon receipt of the notices, he entered appearance and once contested the case.

Mr. Chowdhury, learned counsel appearing for the respondent No.1/claimant has submitted that the claimant is interested to get the amount as awarded, be it from the insurance company or from the owner.

I have considered the submissions of the learned counsel for the parties and also perused the pleadings in the application seeking condonation of delay as well as the affidavit filed therein.

Admittedly the applicant on receipt of the notice from the learned Tribunal entered appearance through the learned counsel. According to the applicant because of the advice of the learned counsel engaged by him, he did not contest the proceeding, as he has been advised that in view of the contract of insurance the award, if any, passed would be against the insurance company. The said position has not been disputed by the respondent No.2 in the affidavit. The respondent No.2, however, has denied that the applicant had no knowledge about the award passed prior to 21.04.2006.

Be that as it may, as the applicant has not contested the said proceeding because of the advice of the learned counsel engaged by him and the learned Tribunal has passed the award by taking into account the aforesaid judgment passed by the Apex Court rendered relating to the cause of action arose prior to the 1

994 Amendment of the Motor Vehicles Act, 1988, I am inclined to condone the dela y in preferring the appeal, as the grounds taken amounts the sufficient cause.

In view of the above, the delay occurred is condoned.

Misc. case stands allowed.